IMT Nuremberg Archives

H – 177

International Court of Justice

Official Transcript of the International Military Tribunal in the matter of the United States of America, the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the Union of of Soviet Socialist Republics against Hermann Wilhelm Goering et al, Defendants, sitting at Nurnberg, Germany, on July 10, 1946, 1000-1700, Lord Justice Lawrence presiding.

5-95

THE PRESIDENT: The Tribunal will sit in closed session this afternoon and will not sit in open session after one o'clock.

DR. THOMA: High Tribunal, Mr. President:

As to the question of the justification of the decree concerning the commitment of manpower, I should like to continue on page 33.

From this results the following principle which is recognized by international law:

Measures undertaken by an occupying power in an occupied territory are legal as long as they are not inopposition to an authenticated legal stipulated of the International Rules of Warfare. Supposition, therefore, would indicate that the occupying power is entitled to the full exercise of all powers deriving from territorial sovereignty over an occupied territory. According to the uniform opinion of experts on international law the occupying power acts by virtue of an original law of its own which is guaranteed and defined as to contents by international law only, in the interest of its own donduct of the war as well as for the protection of the civilian population in the occupied territory. (I refer to the Heyland Handbook on International Law).

The inhabitants of the occupied territory no longer have a duty of allegiance to the enemy sovereign but only to the occupying power; the will of the occupying power rules and decides in an occupied territory; the occupying power is the executor of its own will; its own interests alone are decisive for theexercise of its sovereign rights and it, therefore, is at liberty to act against theinterests of the enemy state (Heyland as above).

In view of the Article 52 of the Hague Rules of Land Warfare the right to conscript labor in the occupied territory is denied. It is stipulated, thereby, that labor services may be demanded from the inhabitants of the occupied territory; the employment must be limited to the re-

H0177-0002

quirements of the occupation forces. It must be adjusted to the available resources of the country and must be of such a nature as not to compel the population to participate in military operations against their own country. In these stipulations I cannot discern any prohibition of labor, consdription in occupied territories; on the contrary, I consider that an approval of compulsory labor service can be deduced from them at once. The employment of such labor in war industry is undoubtedly in accordance with the requirements of the occupation forces and, in my estimation, it is equally beyond doubt that this constitutes no commitment to military operations. The rules of land warfare contain no stipulations as to whether labor service may be demanded only in the home country or whether the conscript may be transported into the native land of the occupying power for the purpose of rendering labor services there. Thus, the general principle holds good, that supposition speaks for the authority of theoccupying power to exercise to their full extent all powers deriving from territ rial sovereignty.

If one takes the correct stand that the International Rules of Warfare should tend to humanize war by limiting the rights of the belligerents and that more progress could be made in this sense one must consider, on the other hand, that the stern reality of war tends to lead in the opposite direction.

THE PRESIDENT: Dr. Thoma, the Tribunal would like to know whether it is your contention that the Hague Rules authorize the deportation of men, women or children to another country for the purpose of labor service.

DR. THOMA: Mr. President, I would like to speak about the interpretation of the Hague Rules of Land Warfare but I will merely deal with the question as to whether it is admissible that for the purpose of collaboration and for the requirements of the occupying forces, whether it is admissible to transport inhabitants of the country for that purpose. I have stated the position here that laborers can also be transported into the native land of the occupying power. About childfen, of course, I have said nothing. As to Jews, I did not speak about that either. I only spoke about men able to work, who were required to work for the necessities of the occupying power and I said it was admissible -- I thought it was admissible that they be transported into thenative country of the occupying power.

H0177 – 0003

THE PRESIDENT: The Tribunal would like to have any authorities in international law which you have to cite for that proposition.

DR. THOMA: Mr. President, I shall mention some more quotations, more detailed quotations. I have already quoted in that regard. I quoted Heyland, "Handbook for International Law", which was published by Stier-Somlo, 1923, and I shall give more quotations.

THE PRESIDENT: Will you tell me what language that book is in?

DR. THOMA: In German, Mr. President. That was the "Handbook on International Law", published by Stier-Somlo, 1923.

Present-day warfare is no longer what it was in 1907. War has developed into total war, a life and death struggle of annihilation, in which the very last physical and moral forces of the nation are mobilized and the loss of which, as is shown by the example of Germany, means unconditional surrender and total destruction of her existence as a state.

Can one maintain, in view of this fact, that Germany in this struggle of life and death should not have been granted the basic right of self-preservation recognized by international law? I refer to Strupp, "Handbook on International Law", published by Stier-Somlo, 1920, Part III, "Violations of International Law", pages 121 and following.

There is no doubt that the very existence of the state was at stake; that is, it was an emergency which justified the compulsory employment of labor, even if it had not been permissable according to international law. It is inherent in that anomaly called war that international law, as soon as the state of war has been proclaimed, is set aside in the interest of the objective of the war -- the overpowering of the enemy. See Strupp as above, page 172. Even through the development of civilization was accompanied by a progressive moderation of this conception, according to which everything

H0177-0004

goes in war until the enemy is destroyed, the rules of warfare constitute even today a compromise between the demands of military necessity with their fundamental boundlessness and chastened humanitarian and civilized views.

One thing, at any rate, is certain: namely, that the existence of a genuine emergency may be pleaded, even under the stipulations of the Hague Rules of Land Warfare. During the negotiations preceding the formulation of Article 46 of the Hague Rules, the following was stated literally and without opposition:

"The restrictions will affect the liberty of action of the belligerents in certain extreme emergencies".

For extreme emergencies, therefore, a state of emergency may be pleaded. It is a recognized international law that even an aggressor must not be denied the right of pleading a state of emergency in case his existence is directly threatened. Strupp, page 170.

In connection with the chapter concerning the Eastern Administration, I should like to point out all that the defendant has said concerning accusations of the Soviet Prosecution, and in particular the reports of the Extraordinary State Commission and the Molotov Reports, during his testimony. Documents USSR 39, 41, 751, 89, and Transcript of 16 April 1946. I hope that the factual corrections made by the defendant will be recognized by the Tribunal.

Now I come to a new subject. Contrary to the assumption of the Prosecution, Rosenburg was by no means the inspirer of Jewish persecution, anymore than he was one of the leaders and originators of the policy adopted by the Party and the German Reich as the Prosecution claims. Walsh, December 13 1945, Transcript page 1244. Rosenberg was certainly a convinced anti-semite, who expressed his conviction and the reasons for it both verbally and in writing. However, in his case, anti-semitism was not the most outstanding of his acitivities. In his book "Blood and Honor", speeches and essays, 1919-1933, out of 64 speeches, f

H0177 - 0005

for example, only one had a title referring to Jewry. The same applies to the other two volumes of his speeches. He felt his spiritual ancestors to be the mystic master Eckehart, Goethe, Lagarde, and Houston Stewart Chamberlain.

Anti-semitism was for him a negative momentum. His chief and most positive efforts were directed toward the publication of a new German intellectual attitude and a new German culture. Because he found this endagered after 1918, he became an opponent of Jewry. Even such different personalities as von Papen, von Neurath, and Raeder now confess to their belief that the penetration of the Jewish element into the whole of public life was so great that a change had to be brought about.

H0177-0006

It strikes me as very important, however, that the nature of Rosenberg's anti-Semitism was, above all, noble and intellectual. For example, at the Party Session of 1933 he spoke of a "chivalrous solution" of the Jewish question. We never heard Rosenberg use expressions like, "We must annihilate the Jews wherever we find them; we shall take measures that will lead to a sure success. We must cut out all feeling of sympathy". The Prosecution itself quotes the following as an expression of the program Rosenberg set up for himself:

"The Jewish question will find a decisive solution after all the Jews have been ousted as a matter of course from all official positions, and through the setting up of Ghettos". Walsh, Transcript 1236.

GENERAL RUDENKO: Mr. President, I would like to interrupt. I believe that the Counsel is going beyond any permissable limits. the defendant is sitting in the dock and hearing his Counsel expressing his fascist sentiments. So far they have not been interrupted by the Court, but I think that it is absolutely inadmissable that the Defense Counsel should use this place to promote anti-human propaganda; otherwise I can not understand the contention of the lawyer that Rosenberg's belief in gathering all Jews in ghettos was chivalrous. I feel that the lawyer is expressing his opinion, and I protest against the use of the International Military Tribunal for the spreading of anti-Semitic propaganda. I ask the Tribunal to consider this objection of mine and to take appropriate action.

H0177 - 0007

DR. THOMA: May it please the Tribunal.

THE PRESIDENT: We don't think it is necessary to trouble you. The Tribunal thinks that there may, of course, be differences of opinion as to the use of words in the course of your argument, but they see no reason for stopping you in the argument that you are presenting to the Tribunal.

DR. THOMA: Thank you.

May it please the Tribun al, after what General Rudenko has said, I should like to make one statement. In setting this up, I have tried to argue upon the statements of the prosecution and nothing else.

I would like to say one other thing. The words "chivalrous solution of the Jewish question" was not my expression; I just quoted that a s a statement made by Rosenberg a long time before he came into this court.

The prosecution quotes the following: "The Jewish question will find"--and so on; I have already read that.

It was not a mere question of chance that Rosenberg did not take part in the boycotting of Jews in 1933, that he was not called upon to work out the laws against the Jews in 1933, 1934, 1935, and so on - expatriation, prohibition of marriages, withdrawal of the right to vote, expulsion from important positions and offices, and so on.

Above all, he never took part in the action of 1938 against the Jews, nor in the destruction of synagogues, nor in anti-Semitic demonstrations. Neither was he the instigator in the background, who sent out smaller people to commit certain actions or ordered them to do so.

To be sure, Rosenberg was a true follower of Hitler, of the kind that took up Hitler's slogans and passed them on. For example, the motto, "The Jewish question will be solved only when the last Jew has left Germany and the European Continent." There was one slogan about the extermination of Jewry.

Exaggerated expressions were always part of the National Socialist weapons of propaganda. A Hitler speech without insults to his internal or external political opponents, or without threats of extermination was hardly imaginable. Everyone of Hitler's speeches was echoed a million times by Goebbels down to the last speaker of the party in a small country inn. The

H0177 - 0008

same sentences and words which Hitler had used were repeated, and not only in all the political speeches, but in the German press as well, in all the editorials and essays, until, weeks or months later, a new speech was given which brought about a new echo of a similar kind.

Rosenberg was no exception. He repeated all of Hitler's slogans just like the rest, that of the "solution of the Jewish question", and once also that of the "extermination of Jewry", and so forth. Apparently, like Hitler's other supporters, he gave little thought to the fact that in reality none of those words were clear, but that they had a sinister, double meaning and, though they may have meant real expulsion, they may also have meant the physical annihilation and murder of the Jews.

May I remind the Tribunal here that Rosenberg, during his testimony, made a reference to a speech of the British Prime Minister in the House of Commons, in 1933, in which speech it was stated that Prussian militarism had to be exterminated. He said that no German interpreted that literally; he believed no one interpreted it in such a way that it meant the German soldiers and the National Socialist had to be exterminated, every one of them.

Quite apart from the knowledge and will of the German people, and quite apart from the knowledge and will of the majority of the leadership of the Party--that is, Bormann, Himmler, Eichmann, and so on--there was hatched and carried out, from 1941 onwards, a mass of crime which surpassed all human conceptions of reason and morality. The Jewish question was even further developed and brought to its so-called final solution.

The Tribunal will have to decide the question whether Rosenberg too, as the specially characteristic exponent of the Party and Reich Minister for the Occupied Territories, is also responsible for the murdering of Jews, and particularly for the murdering of Jews in the East. Or, must it be recognized and admitted that though he stands a hair's breadth from the abyss, it was, after all, nothing but external circumstances which led up to it all, and that these circumstances were outside his sphere of responsibility and guilt?

I believe I can say with complete conviction that Rosenberg never aimed, either openly or in secret, at the physical extermination of the Jews. His reserve and moderation were certainly no mere tactics. The gradual slipping of anti-Semitism into crime took place without his knowledge or his

H0177-0009

will. The fact in itself that he preached anti-Semitism justifies his punishment as the murderer of Jews as little as one could hold Rousseau and Mirabeau responsible for the subsequent horrors of the French Revolution.

No matter how much the first impression might lead to it, criminal guilt on his part cannot be deduced either from his position as Reich Minister for the Occupeied Eastern Territories.

As already stated, the Minister in charge cannot be held responsible without more ado for criminal acts committed in the sphere of his occupations or his territory. Criminal responsibility, according to the Penal Code, Paragraph 357, exists only if an official knowlingly assents to the criminal actions of his subordinates, and if--the commentary furnishes the details--the superior is in a position to prevent the action.

I should like to take up the question of his responsibility on the grounds of the documents submitted.

First, the action taken against the Jews at Sluzk--document number 1104-PS.

On October 27, 1941, a horrible slaughtering of Jews took place in Sluzk through the four companies of a police batallion, because the commander received an order from his superior to clear the city of all Jews without exception. The Regional Commissioner immediately made vigorous protests and demanded that the action be stopped at once. With pointed revolver he kept the police officer in check.

He reported to the Commissioner, General Kube, of White Ruthenia at Minsk, and the latter suggested to Reich Commissioner Lohse that the officers implicated be punished for the unheard of butcher. The latter reported to the Reich Minister for the East, with the request that measures be taken at once in higher places. The Reich Minister for the Occupied Territories sent the entire report to Heydrich, the Chief of the Security Police and of the SD, requesting further instructions. Due to an ingenious system, according to which the police was not responsible to the competent administrative chief and was not even obliged to report, Rosenberg could not take any further steps either in this or in similar cases. He wasnot above the police and could only hope that the transfer of the report to Heydrich would be sufficient to stop what he considered to be regional excesses of the police.

H0177 - 0010

It can be seen from the indignation of all the administrative offices over the reported incidents that none of them knew anything about them, that it was no question of excesses, but of an action ordered by Heydrich and Himmler. When Heydrich and Himmler declined the responsibility, Rosenberg could not suspect anything.

Secondly, from October of 1941 comes document 3663-PS, in which the Reich Minister for the occupied territories--

THE PRESIDENT: Would you give us the number again?

DR. THOMA: That is 3663-PS, in which the Reich Minister for the Occupied Eastern Territories--signed, "for Dr. Leibrandt"--calls for a report by the Reich Commissioner Ostland because a complaint has been made by the Chief Office of Reich Security, the RSHA, that the Reich Commissioner Ostland has prohibited Jewish executions in Libau. To this the addressee replied:

"I prohibited the execution of Jews inLibau because there was no justification for the way in which it was carried out."

This is followed by a request for further instructions. Of this document--which is signed by the departmental chief Liebrandt, and which in no way points to any knowledge on the part of the defendant Rosenberg--the following careful statement may be made in brief:

It is not conceived as a reproach by the Reich Minister East because the executions of Jews were not continued, but it simply points to the transfer of a complaint to the Reich Security Office, the RSHA, with a request to report. It is to be posumed that the reason for the complaint was that the Reich Commissioner Ostland encroached on the competency of the Reich Security Chief, RSHA, and the demand for a report was supposedly issued in that sanse.

In a letter of the 18th of December, 1941, the Reich Minister also signed "for Braeutigam", asking the Reich Commissioner Ostland to settle directly any questions which occurred with the Higher SS and Police Leaders.

H0177-0011

To identify the sign "R" as Rosenberg's initial, because the Prosecution obviously was more than doubtful about Rosenberg's knowledge of matters, turned out to be a failure, too.

The Document No. 3428-PS concerns a letter of the General Commissioner for White Ruthenia to the Reich Commissioner for the East. It is a shocking document about the mass extermination of Jews in White Ruthenia; however, there is nothing of interest in it for the case against Rosenberg, because these horrible events may be attributed to him only if he knew of them, and, neglecting his duty, failed to intervene. There is no actual proof to go by for a supposition of such knowledge. The claim that these documents were found in Rosenberg's possession is not in accordance with the actual facts, for they show the Reich Commissioner in Riga as the addressee.

In the Aktennotiz (the signed note) for the Fuehrer of the 18th of December, 1941 (Document No. 001-PS, USA 282) the defendant suggested the following, which I must quote literally: "The outrages against members of the German Wehrmacht have not stopped, but have gone on. It looks as though there were an obvious plan to disturb German-French cooperation to force Germany to take measures of retaliation, thereby bringing about a new defensive attitude on the part of the French against Germany. My suggestion to the Fuehrer is that instead of killing 100 Frenchmen now, he should have 100 or more Jewish bankers, lawyers, etc., shot".

It is not my task here to say how far it is admissible to shoot hostages, but one thing is certain, that Rosenberg was convinced such a measure was admissible. In that case, however, his suggestion must be considered in that light, and can by no means be judged as an independent incitement to murder.

The suggestion, however, had no results. In his reply of December 31, 1941, Lammers, acting on the Fuehrer's order, merely referred to the suggestion of utilizing the furniture and fittings from Jewish houses, and not to the shooting of hostages. Rosenberg made no more reference to it, either.

At this point, I should like to recall that the French prosecutor accused Rosenberg, when the latter was in the witness box, that that was murder. Gentlemen of the Tribunal, it was not murder, because no execution took place. It was no incitement to murder. One can only incite someone who still has to

H0177 - 0012

be convinced or persuaded.

However, if the man who commits the act is already convinced in omno moro facturo, he can be incited no more, and there is only the derelict of a suggestion of a criminal act, which, according to German law, is just a violation to receive only slight punishment because it has had no consequence.

Just at this point, I should like to recall that Rosenberg testified as a witness that on one occasion a regional commissioner in the East was sentenced to death for having extorted valuables from a Jewish family, and that that sentence was carried out. Please do not consider it a bad argument of defense when I say: Does that not prove that Rosenberg loathed criminal acts against the Jews?

5. The Document %-135, USSR-289, refers to the report of the General Commissioner of White Ruthenia, in Minsk, dated June 1, 1943, on the subject of what happened in the prison of Minsk as regards gold fillings. This was addressed to the Reich Commissioner of Ostland, who forwarded the report on the 18th of June 1943, with his marked anger.

At this hearing before the Tribunal on April 16, 1946, the defendant already made a statement on this point.

THE PRESIDENT: I think we are going a little too fast.

DR. THOMA: Thank you.

I should like to repeat this briefly now: He had returned on the 22nd of July, 1943, from an official visit to the Ukraine and found a pile of notices about conferences, a number of letters, and above all the Fuehrer decree from the middle of June, 1943, in which Rosenberg was instructed to limited himself to the principles of legislation and not to bother about the details of law.

Rosenberg did not read the letter, but he has to surmise -- he cannot remember it -- that the letter was explained to him by his office, and presumably in the course of the reading hewas informed of many documents and learned that there was again serious trouble between the Police and Civilian Administration. And it is probable that Rosenberg said: Turn that over for investigation to Gauleiter Meyer or to the Police Liaison Officer.

If it were not so, the terrible details would certainly have remained in Rosenberg's memory.

Nobody doubts for a moment that the horrible crimes shown in these documents

H0177 - 0013

and all the other frightful things not covered in the documents, but which actually happened, call for atonement. Nobody is in doubt that not only the lesser tormentors acting on higher orders might be punished, but also and above all those who issued the orders and those responsible for the crimes. Rosenber did not issue an order to murder the Jews; so much is clear. But is he, in spite of this, responsible for the frightful murders?

The defendant has left no trace in handwriting of any of the murder documents. In any case, it could not be determined that he knew anything about what went on. But can we condemn Rosenberg on the basis of his supposed and probable knowledge? Rosenberg has by no means the intention of playing a false and cowardly game of hide-and-seek behind his advisors and subordinates. But let us remember with what cunning the so-called executions of the Jews were kept secret, not only from the public, but even from Hitler's most important colleagues.

Is it not possible and even credible that they were playing a game of hide-and-seek with Rosenberg? The thoughts and intentions of none of the other NSDAP leaders were revealed so openly and clearly to all the world as those of the editor Rosenberg, in particular. Of none other could one be so sure that h would turn with indignation from the cruel, inhuman acts.

But let us go one step farther and assume that Rosenberg had full knowledge of this, the greatest crime of all. It is not proved, but one could imagine it and surmise it. Is he then responsible, too? Peculiar, even subtle, too, as we well know, was the departmental authority and the responsibility which went with it in the Eastern countries. The entire complex of the police force had been taken from Rosenberg's sphere of influence, the highest instance of which was Himmler, and under him Heydrich. Of their orders and measures Rosenberg had no knowledge and no suspicion, as a rule.

The lower echelons of police chiefs and police organs were in effect subordinate and responsible to their police superiors and no one else. It was quite immaterial whether or not Rosenberg knew anything of the measures taken by the police. He could do as little about it as any other of his fellow citizens in the Third Reich. One might say, yes, he could have remonstrated with Himmle or Hitler; he could have given up his position.

H0177 - 0014

Of course, he could have done so. The point, however, is not whether he could have done it. The question is, Would he have achieved anything by doing so. That is to say, whether he could have prevented the executions. For only in such a case could his responsibility be affirmed on the ground of his failure to do so, and only in such a case could one speak of causality without which criminal responsibility is unthinkable.

One can make further claims, still under the assumption of Rosenberg's knowledge of matters, that Rosenberg could at least have stepped in against the Reich Commissioners, who were obviously involved in these matters. We know that the administrative organization and the dividing up of supreme authority in the East were vague, to say the least. The Reich Commissioners were sovereig masters in their own territory. They had the final say in the shooting of hostages and in other retaliatory measures of far-reaching consequence. And what was the extent of their authority? In case the Reich Commissioner was dissatisifed with Rosenberg -- and he mostly was dissatisifed -- he went to Hitler.

Does anyone really believe that if Rosenberg had different opinions from those Koch as regards the execution of Jews he would have been upheld by Hitler if he had gone to him? In this again, there is a lack of that causality which is indispensible for a legal indictment.

I come now to the Einsatzstab Rosenberg, the Operational Staff Rosenberg.

H0177-0015

No less than three prosecutors have taken the stand in this trial against Rosenberg and have accused him of having systematically stolen objects of art and science on a large scale in the East and West (Storey 18 December 1945, Protocol Page 1408; Gerthofer, February 6, 1946, Protocol Page 3945; Smirnow February 15, 1946, and February 21, 1946). First I must take exception to some obvious exaggerations and injustices, that is, the assertion that the activities of the special staff in the West extended to public and private property without distinction, (Page 3951) and that the objects of art Germany appropriated amount to more than the treasures of the Metropolitan Museum in New York, of the British Museum in London, of th Louvre in Paris, and of the Tretjakew gallery all together.. Further, I must declare the statement incorrect that the looting program of Rosenberg was intended to rob the occupied countries of their entire centuries-old possessions of art and science. Finally, the Prosecution contrasts Rosenberg's actions to the looting of art -- treasures in former wars. It says that while egotism, conceit, taste and personal inclination were the underlying motives of such looting, the national-socialists in the first place had the criminal intention of storing up reserves of things of value. (Page 3965). I think it unnecessary to go back over the looting of art treasures in former times as far as Napoleon, because the concepts of International Law and regulations have changed in the meantime, but I should like to mention two things:

1) How many of the most famous objects of art in the most famous galleries of the world got there through the channels of war and how many got there in a peaceful way?

2) I can accept the fact that the Prosecution denies Rosenberg any delight in art, or joy in the possession of treasures of art as a possible motive for his actions because Rosenberg was no pirate of art -- no thief. He had no intention of appropriating the objects of art for himself or for someone else.

What were the actual facts? Rosenberg's operative staff was

H0177-0016

active in the east and in the west. It had two tasks, 1) to search libraries, archives, etc., for material suitable for the "high school" of the Party which had been planned to confiscate this material and take it away for the purpose of research, and 2) to seize objects of cultural value that were in possession of or which belonged to Jews, or which had no owner or were of a doubtful origin. The Prosecution says "the true and only motive, the true and only purpose of this 'seizure' was robbery and looting. There could be no question of intentions of 'more safeguarding'."

On 20 August 1941 Rosenberg wrote to the Reich Commissioner Ostland that he wished distinctly to prohibit the transfer for any kind of art treasure from any place whatsoever without the approval of the Reich Commissioner. (Document Number 1015c-PS). On 30 September 1942 the High Command issued an order in agreement with Rosenberg to the following effect.

"Apart from exceptional cases when it is urgent to safeguard objects of cultural value which are in danger, it is desired that for the time being such objects be left where they are." Further, it says, "The troops and all military service posts within the operational area are invariably directed to spare valuable cultural monuments as far as possible and to prevent their destruction or damage."

In the report of the Special Staff for Fine Arts it says that in the occupied eastern territories the activities of the Special Staff for Fine Arts were restricted to the scientific and photographic seizure of official collections, and that the safeguarding and protection of these was carried out in cooperation with the military and civilian service posts. It further says that in the course of vacating the territories, a few hundred valuable Ikons and paintings were saved and with the cooperation of individual army groups were brought to a place of hiding in the Reich. Finally, on 12 June 1942 Rosenberg sent out the following decree in a circular letter to the highest Reich authorities. In the occupied eastern territories a number of service posts and individual people are oc-

H0177-0017

cupied with the salvaging of objects of cultural value. They worked from various angles and independent of each other. It is absolutely essential for the administration of the territories that a survey be made of the existing objects of cultural value. Furthermore it must be seen to that as a general rule they be left where they are for the time being. To this end, I have set up a central post for special discernment in my Ministry to lay hold of and salvage cultural value in the East."

Rosenberg as can be proved here, proceeded from the point of view that objects of cultural value and remai in the country and only through the retreat of the German troops were few hundred valuable Ikons and valuable paintings brought into Germany.

In time of war, objects of cultural value both mobile and immobile are as exposed to the danger of destruction as are any other values. Rosenberg could have stopped all unnecessary destruction, theft and removal inasmuch as he contralized the safeguarding of objects of cultural value and had all necessary action taken throu his operational staff in the east and the West. (See Abels' report on the library at Minsk 076-PS, USSR 375.) It is quite in accordance with the conception of International Law (See Scholz, Private Property in Occupied and Unoccupied Enemy Country, Berlin 1919, page 36) that care should be taken on the part of the occupiers not only to protect but to safeguard and salvage protected objects of art as far as the war situation permits. Yes, it is even considered a cultural duty for the occupier to remove particularly valuable objects of art from the zone of fire and place them in safety as far as possible. Under the circumstances the concept of International Law may make it the right and duty of the occupier to bring into his own country for reasons of salvage objects of special scientific and artistic value. This is not an inadmissable seizure (Article 56 Par. 2, LKO), because the latter term could onl apply to acts which are hostile to culture and not acts which are friendly to culture. (See Scholz, Page 37.)

Finally, I want to refer to document Number 1109-PS. A repor

H0177-0018

according to which scientific institute that had been saved were ready to be taken back to the Ukraine immediately after the hoped for re-entry of the troops. I consider it completely impossible to read anything about looting into this clear text.

Certainly, in the east great quantities of cultural objects of considerable value were destroyed by direct military actions or by wanton destruction or looting. It would be a fundamental misjudgment of the true facts of the case and a great injustice if these losses should be charged to the account of the Rosenberg Einsatzstab, and its chief, for his efforts were in the opposite direction.

In the West (I refer to the testimony of Robert Scholz of the 19th of May, 1946, Document Rosenberg 041), the case was different but, in my opinion, here also the defendant cannot be charged with looting and robbing objects of art. When in the summer of 1940 the Parissiennes with the exception of the Jews had once more returned, somebody conceived the idea of searching the now ownerless apartments, houses, and castles for books and libraries and of taking what was interesting of this scientific material to Germany. From various branches of the Wehrmacht, the Armed Forces, the report came that especially in Jewish castles there were collections of objects of art which one could not guarantee would remain intact in case of a long occupation. Thereupon, Rosenberg made the proposal that his Einsatzstab be allowed to direct its attention at objects of art and to take care of them, which was then ordered by Hitler.

What did the Einsatzstab do with these objects of art? It set up an accurate card index containing the names of the particular owner of each picture, photographed the objects of art, scientifically appraised them, repaired them expertly insofar as was necessa packed them carefully and shipped them to the Bavarian castles of Neuschwanstein and Chiemsee. Because of the danger of air raids, they were then stored in an old Austrian mine. Rosenberg attached great importance to keeping the objects cared for by the Einsatzsta

H0177 - 0019

separately and not mixed in with the great purchases which Hitler made for these proposed galleries in Linz.

Was that looting, robbery, theft? Looting is the indiscriminate and wanton carrying off of objects in the situations of general distress and danger. Robbery is carrying off by force. Theft is the carrying off without force. In all cases the intent must exist to appropriate the object illegally for oneself or somebody else. What intent did Rosenberg have? He has never denied that he and his co-workers had hopes of the pictures remaining in Germany. Perhaps as compensation or as security for the peace negotiation but his intent was only directed at confiscating and safeguarding the objects and that has been proved. The question of what should be done with the confiscated items was left open until the end and no decision made on it. It is absolutely certain that Rosenberg did not have the intention of appropriating the things for himself or anybody else. If Rosenberg had been a plunderer of objects of art, he certainly made notations concerning dates and place of confiscation and names of the owners. As a precaution, however, I should like also to point out that because of the flight of their owners, the objects were ownerless and that the question of the lack of owner and the question of the legality of their acquisition by Rosenberg cannot be judged by normal circumstances but must be judged according to the extraordinary circumstances of the war.

If the Prosecution claims that public and private objects of art were stolen at random I should like to reply to the statement that only Jewish possessions, and indeed as mentioned, ownerless objects were confiscated. Above all it is not true that state owned property was also touched.

Finally he did not act on his own responsibility but acted in carrying out a state order and finally I want to ask that the fact be not ignored that Rosenberg acted without any egotistical motives. Not a single picture passed into his private possession; he did not gain a single mark from this transaction which was worth millions, and after all, the entire lot of artistic and cultural

H0177-0020

property has been found again.

Goering supported the work of the Einsatzstab and, as he admits, "diverted some objects for his own purposes with the Fuehrer's approval. This disturbed Rosenberg because the Einsatzstab was in his name and declared that as a matter of principle he did not want to give anything even to the museum; that his task was purely one of registration and safeguarding. That the Fuehrer should have the final decision on these works of art. Rosenberg could not undertake anything against Goering but he ordered his deputy Robert Scholz at least to make an accurate inventory of what was given to Goering, and to have the latter sign a receipt which he did. And so, it most certainly cannot be proved that Rosenberg had the intention of illegally appropriating the objects of art for himself or for somebody else. Furthermore, Robert Scho confirmed that Rosenberg also forbade all his assistants to acquir any objects of art or culture even by virtue of an official appraisal. (Document R-041.)

The Prosecution says that with the Rosenberg Einsatzstab a gang of vandals broke into the European House of Art in order to plunder in a barbarous way. If one thinks of the tremendous work of drawing up and inventory, of cataloguing, restoration, and scientific appraisal, and if one finally bears in mind that all these treasures were most carefully stored away, and certainly came through the war better than would have been the case if the German authorities had not taken care of them. I believe that objectively speaking one can use any term but that of "vandalism."

PRESIDENT: I think this would be a good time to break off.

Rosenberg is also especially charged with looting furniture. He is alleged to have robbed 79,000 Jewish-owned apartments, among them 38,000 in Paris, of their contents, and to have taken the loot to Germany. Unquestionably, these measures were taken for the benefit of air-raid victims; in the cities which had been destroyed by air-warfare new apartments were built for the homeless.

It was in line with the National-Socialist mentality, and must certainly be morally condemned, that the confiscation was limited to Jewish property. The essential question, however, is whether the confiscation was at all legal. In all my statements, I have avoided -- and I do not wish to do it at this point, either trying to excuse a war legal position with a state of military emergency, for as an expert international law states, "the state of emergency is the lever by means of which the entire body of martial law can be torn off its hinges." But in this case was not national and military necessity the ground for justification, did not air warfare bring "intense and general distress " to Germany ? One might object : "The distress could have been ended by unconditional surrender". In my opinion, however, by this reference to unconditional surrender, the abandonment by the Reich of its own existence and independence and its own vital interests, this ground of justification cannot be taken from the defendant. The appropriation of enemy private property took place in application of a right of requisitioning which was extented beyond the legal maxims of martial law and justified by the state of emergency. I venture to assert that his procedure of confiscating furniture, in view of the devastating effects of the air warfare against Germany, was not contradictory to "the customs among civilized peoples", "the laws of humanity", and "the demands of the public conscience" (Marten's clause in the preamble of the agreement concerning the laws and customs of land warfare; see Scholz in the aforementioned book, page 173).

May it please the High Tribunal, I shall now pass on to the Norway operation.

The prosecution characterizes Rosenberg and Raeder as the most energetic conspirators of the Norway Operation and later in the same matter calls Rosenberg a "dealer in high treason". The opinion of the prosecution and also the supposition of the present Norwegian Government (Norwegian report of 3 October 1945, Document No.TC-56) are obviously that the Party's foreign office

H0177 - 0021

H0177 - 0022

of which Rosenberg was the head, and Quisling, had plotted the war against Norway in a mutual conspiracy. I believe that of all the charges against Rosemberg hitherto dealt with none has less foundation than this one. On the basis of the few documents which have been submitted to the court, in my opinion, the case could doubtless be cleared up in favor of the defendant.

There was a Party "foreign office" which had the task of informing foreign visitors about the National-Socialist movement, of referring any possible suggestions to the official offices, and otherwise of functioning as a central office of the Party for questions of foreign policy. The special interest, and I may perhaps say the special sympathy, of the leading men of the Party and the State, was directed at the Nordic countries; it was in this direction that the A.P.A. placed the main emphasis on the field of cultural policy. The already existing Nordische Gesellschaft (Nordic Society) was expanded, the birthdays of great Nordic scientists and artists were observed in Germany, a great Nordic music festival was held, etc. The relations first took on a really political note with the appearance of Quisling, whom Rosenberg had seen for the first time in 1933, and who then, in 1939, -i.e. six years later -- looked up Rosenberg again after the convention of the Nordic Society in Luebeck; the former spoke of the danger of European enganglements and expressed the fear that Norway was in danger of being drawn into them. He then feared above all a partitioning of his country in such a manner that the Soviet Union would occupy the northern part and England the southern part of Norway.

Quisling again appeared before Rosenberg in Berlin in December 1939. The latter arranged for a conference with the Fuehrer. Hitler declared that he would by far prefer to have Norway remain completely neutral and that he did not intend to extend the theater of war and involve more nations in the conflict, but he would know how to defend himself against a further isolation of and further threats against Germany. In order to counteract the increasing activity of enemy propaganda, Quisling was promised financial support of his movement, which was based on the Pan-Germanic idea.

The military treatment of the questions now taken up was assigned to a special military staff; Rosenberg was to deal with the political aspect and he appointed his assistant Scheidt to maintain liaison between him and Quisling. Hagelin, a Norwegian confidential agent of Quisling's, in January 1940, gave Rosenberg some more disturbing reports on the feared violation of Neutrality by

H0177 - 0023

the Norwegian government and Rosenberg passed them on to Hitler. After the "Altmark" incident, Hagelin, who moved in Norwegian government circles, intensified his warnings. The Allies had already begun to study the Norwegian seaports for disembarkation and transportation possibilities; in any case, the Norwegian government would be satisfied with protests on paper, and Quisling sent the message that any delay in undertaking a counteraction would mean an exceptional risk. Rosenberg again handed the reports immediately to Hitler. If he had not done so that would actually have been treason to his country. The German counter-blow followed on 9-4-1940 and Rosenberg learned about it from the radio and newspaper like any ordinary citiwen. After his above mentioned report, which he made in the line of duty, Rosenberg did not participate in either diplomatic or military preparations.

Should there still be any doubt that Rosenberg was only an agent who forwarded information to Hitler and not an instigator, conspirator or traitor in the Norwegian case, I should like to refer to two documents. First, to Document No. C-65, Rosenberg's file note concerning Quisling's visit. Obviously, it is the information on Quisling which had been requested by Hitler of Rosenberg. If Rosenberg had been on close terms with Quisling, he certainly would have wanted to inform Hitler about it. Rosenberg had only heard of a fantastic and impracticable plan of Quisling's for a coup d'etat (occupation of important central offices in Oslo by sudden action, supported by specially selected Norwegians who had been trained in Germany, then having the German fleet called in by a newly-formed Norwegian government). However, an earlier report of Quisling appeared less fantastic to Rosenberg; according to which - names were given - officers of the Western powers travelled through Norway as consular officials, ascertained the depth of the water in ports of disembarkation, and made inquiries into the cross-sections and heights of railway tunnels.

H0177 - 0024

This was the true and only reason for everything Rosenberg did in the Norwegian matter. The second document is the report concerning "The Political Preparation of the Norway-Operation" (Document No. 004-PS, GB-1305), a report from Rosenberg to Hess of 17 June 1940. In this inter-departmental report also there is nothing which deviates from Rosenberg's own trustworthy statement and which would let him appear as an instigator of war and a person guilty of high treason.

Rosenberg was not called in at any political or military discussion concerning Norway. Thus, what criminal act did Rosenberg commit? Was it criminal that he tried "to gain influence in Norway" (TC-56) or that with his knowledge subsidies were given to Quisling by the Foreign Office? Finally, I should also like to point out that later on, after the operation had succeeded, Rosenberg in no way was entrusted with an office or function with regard to Norway; that even the appointment of a Reich Commissioner for Norway was carried out without consulting him.

In connection with this I shall briefly mention the case of the Rumanian minister Goga. Rather I do not wish to read it but I would ask the High Tribunal to consider it as having been reported on.

Now I turn to the topic, Persecution of the Church.

The Prosecutionmaintains that Rosenberg together with Bormann issued the orders for religious persecutions and induced others to participate in these persecutions. However, not a single order of that kind is known. There were presented only writings of Bormann, partly to Rosenberg, partly to others, from which no charges against Rosenberg can be drawn. On the contrary, Rosenberg was repeatedly reproached as once, when in the presence of Hitler, he praised a book by Reichsbishop Mueller (Doc.No.100-PS); another time, when Rosenberg gave Reichsbishop Mueller instruction to work out directives for thoughts regarding religious instruction in schools (Doc.No.098-PS); once again when Rosenberg promoted a strictly Christian piece of writing by General von Rabenau.

As a witness Rosenberg declared himself (Protocol p. 1874) that he always declined propaganda advocating the withdrawal from the Church and never called for state and police measures against his clerical and scientific

H0177 - 0025

opponents, and particularly that he never used the police for suppressing those who were opponents of his book, "Myth of the 20th Century." In December 1941 he had issued, as Reich Minister for the occupied Eastern territories, an edict for church toleration (Doc. No.1517-PS); with arrests, the deportation of priests, and persecution of the Church Rosenberg had nothing to do. He had no part either in the negotiations with the Vatican over the Concordat or in the assignment of the Protestant Reich Bishop; but neither did he take any part in measures which were hostile to the Church, and which were later carried out by the police. He never participated in any other administrative or legislative anti-clerical measures.

In my opinion it is quite impossible, for lack of documentary evidence, to construe from what Rosenberg thought and said about religious and philosophical matters, that he enspired towards a political suppression of religion. The only document (130-PS) pointing in this direction was withdrawn by the Prosecution itself, before I saw myself obliged to draw attention to it as a pamphlet drawn up against Rosenberg. His book "The Myth of the 20th Century" which is allegedly written for the reshaping of confessions in the spirit of a German Christianity, is moreover chiefly addressed to those who have already broken with the Church.

"No consciously responsible German", says Rosenberg on one occasion in it, "should suggest withdrawal from the Churches to those, who are still faithful members of them" (Doc.No.Ro.7, Doc. Book I, p.122). "May science never have the power to dethrone true religion" (See the same page 125). His writings are not addressed to the faithful church-goers of today in order to hinder them in the course of their spiritual life, but to those who have already discarded their faith." (Doc.No.Ro. 7, Doc. Book I, p.125).

In his speeches he declared that the Party is not entitled to establish norms in metaphysical matters which deny immortality etc. Having been assigned to supervise ideological education he said explicitly in his Berlin speech of 22February, 1934:

"No national-socialist is allowed to engage in religious discussions while wearing the uniform of his movement", and he declared at the same time

H0177 - 0026

that all well-disposed persons should strive for a pacification of the entire political and spiritual life in Germany (Ro. 7a, Doc. Book page 130). That in this respect, too, things developed on different lines is not due to will or influence of Rosenberg.

Moreover, I need to make only a brief allusion to the fact, that it is a question of the 1000 year-old problem of relations between the clerical and so-called worldly powers. The struggle of emperors, kings and popes in the middle ages; the French revolution with the shooting of priests; Bismarck's clerical controversy; the secular legislation of the French republic under Combes: all these were things, which from the standpoint of the Church are persecutions, but from the standpoint of states and nations are termed necessary measures.

Mr. President, may I make a brief statement by way of explanation. I wanted to say that I have concluded this topic, that I do not wish to concern myself with it any further.

Ideology and Education have been nothing but a means of obtaining power and consolidating that power. Uniformity of thinking has played an important part in the program of the conspiracy. The formation of the Wehrmacht has only been possible in conjunction with the ideological education of the nation and party; so says the Prosecution (Brudno, on 9-1-1946. And continuing its attacks against Rosenberg, the Prosecution continues: Rosenberg's ideas formed the foundation of the national-socialist movement. Rosenberg's contribution in formulating and spreading the national-socialist ideology gave foundation to the conspiracy by shaping its philosophical technique.

I think that one will have to take care, in judging Rosenberg's case, not to yield to certain primitive ways of thinking and become a victim of them. First of all an exaggeration of the conception of ideology and the imprecise use of that conception. At best it was a political philosophy, which went hand in hand with Hitler's political measures and which Hitler himself preached in his book "Mein Kampf", but it was not an ideology in an all-embracing sense. It is true that national-socialism endeavored to create a spiritual philosophy and world ideology of its own, but it had not reached that stage yet. Rosenberg's book "The Myth of the 20th Century" is an attempt

H0177 - 0027

in that direction, being a personal confession, without any suggestion of political measures. Therefore, his philosophy cannot have formed the ideological basis of national-socialism. Besides this there is a total lack of proof that a straight spiritual line, a clear spiritual causal connection exists between the conceptions of Rosenberg and the alleged and actual crimes.

If one goes to the trouble of looking through the book "Myth of the 20th Century",

H0177 - 0028

one sees immediately that though there is some philosophizing in the national-socialist way, it would be, however, pure fiction to affirm that there is any dogmatic formulation of an aggressive program in this book or that it is a foundation for the activities of the responsible leaders of the German Reich in the World War.

Another mistake of nationa-socialism was perhaps the boundless unification and simplication: people were made uniform; thinking was made uniform; only one uriform type of German was left. Presumably there was also only one national-socialist way of thinking and only one national-socialist ideology. But in spite of this, as we see today, the leaders were frequently of different opinions in essential questions. I will recall the mere questions of the policy in the East.

Here in the Tribunal, too, there seems to be a danger of accepting this way of thinking, of observing everything through the spectacles of uniformity and of saying: One idea, one philosophy, one responsibility, one crime. Such a simplification apart from its primitive nature would surely be a great injustice toward the defendant Rosenberg.

Finally , when one hears how the prosecuting authorities attack "German Christianity", the 2Heathenish Bloodmyth", pillorying Rosenberg's expression "the Nordic blood is the very mystery, which superseded and overpowered the old sacraments", one may close one's eyes for a moment and picture oneself at a session of the Inquisition in the Middle Ages where they are about to sentence Rosenberg as a heretic to the stake. Surely nothing can be farther from the Tribunal's mind, than to harbour thoughts of intolerance, as here in spite of all atempts by some of the prosecutors, to affirm that it is not idelogies but crimes which are being debated here.

In the defendant Rosenberg's case we are debating: whether by his teachings he did wilfully prepare and further a crime. The prosecuting authorities have brought forth arguments to prove this, but have not proved it, and I can prove the opposite merely by pointing out Rosenberg's activities in the East. Had he been the bearer and apostle of a criminal idea, he would have had an opportunity, such as no criminal has ever had yet in world history, to indulge in criminal activities. I have stated explicitly and specifically that in his case it was just the opposite. So when the bearer

H0177 - 0029

and apostle of an idea himself has the greatest of opportunities and yet behaves morally, then his teachings cannot be criminal and immoral either, and above all, he cannot be punished then as a criminal on the ground of his teachings. What criminally degenerate persons practised as alleged national-socialism cannot be laid to the charge of Rosenberg. Moreover, Rosenberg's speeches in three tomes, which express what he taught during the course of 8 years, bear witness to the honorable nature of his endeavors.

Thus if we give up the false conception of uniformity: One party, one philosophy, one ideology, one crime, then in view of the indisputable fact that Rosenberg himself never pursued a policy of extermination, destruction and enslavement in the East, we shall have to admit that the facts of the terrible central executive orders and of Rosenberg's philosophy are not identical and on these grounds alone the conclusions of the prosecuting authorit are invalid.

Karl Marx teaches that historical events, and political social reality are conditioned by themore casual play of materialistic forces. Whether Marx acknowledges the independent influence of man and ideas in history is at least doubtful. On the contrary, Rosenberg stresses emphatically the influence and the necessity of the highest ideas in the history of peoples. But Rosenberg does not overlook the fact that every event in history is the result of a totality of acting forces. The will, the passions and the intelligence of the people involved work together to form a historical process which cannot be calculated in human terms. It has already been pointed out, that just as little as Voltaire's and Rousseau's ideas can be recognized as the causes of the French revolution, and the slogans of liberty, equality and fraternity be taken as the cause of the Jacobine terror, as little as one can say Mirabeau and Sieze had wanted or plotted such blood-thirstiness, just as little can one ascribe to Rosenberg as moral or even criminal guilt what became of National-Socialism during its development through the decades. In other words, I believe it is as unjust as it is unhistorical to ascribe today, in retrospect, the negative aspects of National-Socialism which were connected with the terrible collapse to a plan which had been desired from the beginning, a plan which also originated in Rosenberg's ideas.

H0177 - 0030

Therefore, in considering Rosenberg's work the mistake of a standardization which does not correspond to reality is added to the further mistake of mechanization; there is neither a mechanical man nor mechanical history. And, finally, the construction of the indictment is also an absolutely negative one; it views the defendant from the standpoint of political polemics and is impressed by the excitement of people in these most excited times. I must briefly take exception to this distortion of the defendant's mental traits.

The mental state of the period after the first world war and even of the preceding period which gave birth to the defendant's ideas are known to all of us only too well: the mental-psychic uprooting of man by the technical age, his hunger and thirst for a new spirit and a new soul; liberty was the slogan and a new beginning the impulse which directed the will of youth. Its longing and enthusiasm were aimed at nature. The thoughts and wishes of this generation were led into political paths by the contrast between rich and poor, which youth considered unjust and which youth sought to bridge through Socialism and the fellowship of the people. In Germany the development on political lines was further enhanced by the national misfortune of 1918/19 and the Treaty of Versailles, which was likewise felt to be unjust. The idea of a future building of German history through the union of nationalism and socialism, glowed unconsciously in the hearts of millions as the undisputed, tremendous success of National-Socialism proves. The psychic foundation was the will for self-preservation and love for one's fellow countrymen and for the people itself, a people which had already had to suffer so much torment and misery in history.

H0177 - 0031

The Fuehrer principle was no wicked despotism but followed as a logical necessity after the intent based upon Article 48 of the Weimar Constitution. The word "Lebrasraum" was no principle of hate directed at other peoples, but a reference to the fact -- due to the hand of fate -- that for centuries the German people had been crowding against the frontiers and had never found sufficient outlet for its strength.

The will for self-preservation and love for one's own people together with the whole complex of National-Socialist ideas then developed in an inexplicable manner into a furious conflagration, the most primitive considerations of common sense were eliminated just as in a delirium; in complete delusion everything was put at stake and lost. Rosenberg may know that he is innocent of any human, personal guilt in this drama which was caused and committed by the guilt of others.

The questions his conscience put to him however and which he asked himself time and time again, are whether he could have done more for what he thought and upheld as just and worthy, where he neglected essential things, where he fell sh of requirements, what negative events, in so far as he had knowledge of them, he should have attended to with more effort. Can such questions which every person asks when he is crushed by disaster, be considered as evidence for his objective guilg? I do not think so. On 17 January 1946 (transcript p. 2765/66 the French chief prosecutor, M. de Menthon stated the following which I quote:

"We are rather facing systematic criminality which directly and necessarily derives from a monstrous doctrine with the full will of the leaders of Nazi-Germany. The crime against peace which was undertaken immediately is derived from the National-Socialist doctrine."

To refute this assertion I must briefly present this doctrine. I have classified the National-Socialist ideology -- in full accord with scientific opinions -- under the so-called new romanticism. This tendency of the time which was grounded in fate and the necessities of history had gone through the whole civilized world since the turn of the century as a reaction against rationalism and the technical age. It differs from the old romanticism in that it adopts the naturalistic and biological consideration of man and history.

It is borne up by a confident faith in the value and meaning of life and

H0177 - 0032

the whole of reality. It does not glorify feeling and the intellect, but the innermost workings of man -- his heart, will, and faith. This philosophy receives its National-Socialist stamp through the emphasis which is placed upon the mysterious importance of peoples and races for all human experience and work. It is in the people, in the common possession of blood, history, and culture that we find the real roots of strength. Only by participating in the movements of a people and its strength does the individual serve himself and his generation.

Rosenberg's scientific contribution to the racial ideology consists in his description of the rise and fall of great historical figures, who were born of races and peoples who set up definite standards in all fields of language, custom, art, religion, philosophy, and politics. According to Rosenberg the efforts of the 20th century to establish a form for itself are a struggle for the independance of the human personality. In Rosenberg's opinion, then, essence is the consciousness of honor. The myth of national honor is at the same time the myth of blood and race; the race produces and supports the maximum value of honor. Therefore, thesstruggle for the maximum value of honor is also a spiritual struggle with other systems and their maximum values. Thus, intuition stands against intuition, will against will.

Rosenberg expresses this thought in the following manner in his "Myth", Introduction, pages 1 and 2: "History and the task of the future no longer means astruggle between classes, it will no longer be a struggle between church dogma and dogma, but the dispute between blood and blood, race and race, people and people. And this means: A struggle between psychic value and psychic value".

Consequently, Rosenberg had, in any case, no ideas of genocide as Raphael Lemkin opines in "Axis Rule in Occupied Europe", page 81, where he ends the above quotation after the words "rade and race, people and people", but he believed in a struggle between psychic value and psychic value, in other words, spiritual controversy.

I mention this spiritual tendency in order to explain the peculiar fact in National-Socialism that political considerations born of the intellect often gave way before the pathos of will and faith. In Rosenberg's case this danger did not appear so much. In making everything revolve around the "soil", i.e. the

H0177 - 0033

fatherland, and its history and peasantry as the life-growing forces from which spring the essence of a race, he remains in the sphere of life's realities. Perhaps, unaware of it himself, he was, nevertheless, borne upwards by the current.

A question arises, as to the effects this ideology had in political life.

It is clear that the emphasis on will and faith gave special weight to political demands. After the Treaty of Versailles the political demands of Germany were aimed at recovering freedom and equality among the peoples for her great power which was everywhere hemmed in. This had been the objective of German statesmen even before Hitler. The other great powers had certain misgivings about recognizing Germany again as a great power. Rosenberg fough to do away with these misgivings. His weapon was his pen. The Tribunal allowed me to present in evidence an excerpt of Rosenberg's speeches and writings. I submitted it in my Document Book I, Volume 2. In view of the quantity of material and of my intention to submit only the most important matter, because of lack of time, I depend on the Court's being familiar with my document book.

In the first place I wish to call attention to the effects which these boo had on German youth. I may recall the witness von Schirach's testimony. I repeat verbally: "At conventions of youth-leaders at which he spoke once a yea Rosenberg chiefly chose educational, character-building subjects. I remember he spoke for instance on loneliness and comradeship, personality and honor and so forth. At these conventions of leaders he did not deliver speeches against Jews. As far as I remember, he did not touch either on the confessional probl of youth, in any case to the best of my memory. Mostly I heard him talk on such subjects as I have just mentioned."

The attitude of youth was actually better than before the taking-over of power. Idleness, the root of all evil, had ceased and had been replaced by work, the fulfilment of duty, the aiming at ideals, patriotism and the will to ahead. It was a fatality here too, that through Hitler's policy these values were used in the wrong manner.

The charges by the prosecution that Rosenberg was the advocate of a

H0177 - 0034

conspiracy against peace, of racial hatred, the elimination of human rights, of tyranny, a rule of horror, violence, and illegality, of a wild nationalism and militarism, of a German master race, I could already refute by pointing to the excerpts from the "Myth of the 20th Century" which the Prosecution itself has submitted as evidence for the truth of its assertions. In reply to this, in order to refute this assertion by the Prosecution, I want to point in particular to the following facts:

To prove Rosenberg's honest struggle for a peaceful living together of the people I wish to refer to his speech in Rome in November 1933 before the Royal Academy, which was printed in "Blood and Honor"; Document No. Ro. 7b, page 150. In his speech in Rome, Rosenberg pointed to the fateful significance of the four great powers and proclaimed -- I quote his words:

"Therefore he who strives in earnest to create a Europe which shall be an organic unit with a pronounced multiplicity of form and not merely a crude summation, must acknowledge the four great nationalisms as given to us by fate and must, therefore, seek to give fulfilment to the force radiating from their core. The destruction of one of these centers by any power would not result in a 'Europe' but would bring about chaos in which the other centers of culture would also have to perish. In reverse, it is only the triumph of the radiations in those directions where the four great forces do not come into conflict with each other which would result in the most dynamic force of creative thinking and organic peace, not an explosive, forced situation such as prevails today, but it would then guarantee the small nations more security than appears possible today in the struggle against elementary force".

To this line Rosenberg, as chief of the Foreign Office of the Party, remained true. Unfortunately, he could only work for it through his word. No witness could confirm in this court room that Rosenberg had any influence on the actual foreign policy, whether it was directed by Neurath, Ribbentrop, Goering or Hitler himself. Neither in the Austrian, nor in the Czech, nor in the Polish nor in the Russian complex has his name been mentioned in connection with the charge of participation in aggressive wars. Everywhere he was placed before accomplished facts. In the war against the Soviet-Union he received his orders only when the war against Russia had already been declared an acute possibility.

H0177 - 0035

He did not stir up the Norwegian campaign, but passed on personal information in accordance with his duty.

Now, as regards Rosenberg's speeches and writings on the problems of general foreign politics he advocated the Anschluss of the Austrians who had been forcibly excluded from the Reich as a demand born of the right to self-determination which had been proclaimed by the Allies themselves. The revision of Versailles was a postulate of justice against a violation of the treaty of 11 November 1918. To advocate a German Wehrmacht was, in view of the non-disarmament of the other powers, a defense of the solemnly promised equality of rights.

From the standpoint of justice -- and this is what Adolf Hitler personally told Rosenberg -- it is not the affair of other nations to especially champion the living rights of the German people but it is the duty of the German nation itself. For this purpose it needed to establish a firm unity, and to overcome the social strife which made everything unsafe, and it needed a Wehrmacht, and these things all together, would only then make the Reich ready for alliances again.

These were the decisive factors which guided Rosenberg.

I shall now take up the race question. Rosenberg's opinions in regard to the race question were the result of racial research of international scientists. Rosenberg repeatedly asserts (I refer again to the opinions stated in Document Book I, Volume 2) that the purpose of his racial political demands is not contempt of a race, but respect for it. "The leading moral idea of an approach to world history based on the laws of heredity belongs to our times and to our generation, being in full accord with the true spirit of the modern eugenics movement in regard to patriotism, i.e. the upholding and expansion of the spiritually, morally, intellectually and physically best hereditary forces for our fatherland; only in such way can we preserve our institutions for all future times." These words are the leading idea of his demands, though their originator was not Rosenberg, but Henry Fairfield Osborn, Professor at Columbia University who wrote them about the work of his colleague in science, Madis Grand: "The Decline of a Great Race". This research led long before the existence of the Third Reich to eugenic legislation in other countries, in

H0177 - 0036

particular to the American immigration law of 26 May 1924 which was aimed at a strong reduction of immigrants from Southern and Eastern Europe while favoring those from the North and West of Europe.

I do not desire to mention that the murders of those mentally ill are not to be taken up here. With this measure, too, Rosenberg did not have the slightest connection.

For Rosenberg it was a question of spiritual strengthening and consolidation of the German nation, indeed of the Aryan race. He would like to have his ideology considered in that light, above all his "Myth of the 20th Century". His preaching of the significance of race in history did not call -- I remark it again -- for race contempt, but for consideration and respect of the race and demanded the acknowledgment of the racial idea only of the German people, and no of other nations.

He considered the Aryan nations as the leading ones in history. And in doing so he somewhat underestimated the value of other races, as Semitic ones, he, in his praise of Aryan races did not think of the German nation alone, but of the European nations in general. I point out his speech in Rome of November 1932.

I am keeping within the framework of historical truth in pointing to the fact that anti-Judaism is not an invention of National Socialism. For thousand of years the Jewish question has been the minority problem of the world. It has an irrational character which humanly cannot be understood. Rosenberg was a convinced anti-Semite, who in writing and speech gave expression to his convictions and their cause. I have already mentioned that even such different personalities as von Papen, von Neurath, Raeder still are of the opinion that the predominance of the Jewish element in the entire public life had reached such proportions that a change was bound to come. The concrete result of that predominance and the fact that the Jews in Germany when attacked know how to repay in kind, sharpened the anti-Semitic fight before the accession to power.

I wanted to present to the Tribunal a selection of Jewish literary attacks on the national feelings at that time, but the Tribunal ruled my application out as irrelevant; as these writings were not introduced as evidence I cannot speak about them. It is, however, an injustice to Rosenberg to assert that blind

H0177 - 0037

hatred of the Jewish race had driven him into that controversy. He had before his eyes concrete facts of the seditious activities of Jews.

It appeared as if the party program of placing Jews under a large scale law for aliens would be realized.

H0177 - 0038

It is true that Goebbels at that time called for a day's boycotting of Jewish stores. Rosenberg, however, declared in his speech of 28 Jun 1932, on the anniversary of the Versailles Treaty, in the assembly hall of the Reichstag in the Kroll Opera House, that is was no longer necessary that in the capital of the Reich 74% of all lawyers should be Jews and that 80 to 90 percent of the physicians in Berlin hospitals should be Jewish; about 30 percent of Jewish lawyers in Berlin would amply do. In his speech on the Partietag in September 1933, Rosenberg stated in addition, and I quote: "In the most chivalrous way, the German Government has excluded from the percentage stipulations those Jews who have fought for Germany at the front or who have lost a son or a father in the war". (Document Book I, p. 153a). In his speech at the Kroll Opera House, Rosenberg Gave the reason for this measure, saying that an entire nation should not be discriminated against, but that it was necessary for our younger German generation, who for years had to starve or beg, to now be able to obtain bread and work too..

But despite his strong opposition to the Jews, he did not want the "extermination" of Judaism, but advocated as the nearest goal the political expatriation of Jews, i.e. by placing them under a law and protection for aliens. In addition, he granted to the Jews a percentage access to non-political professions which still by far exceeded the actual percentage of Jews in the German population. Of course, his final goal was the total emigration of the Jews from Aryan nations. He had no understanding and appreciation of what great a loss to the Aryan nations themselves such an emigration would be in cultural, economic and political respects. But one must admit that he meant that such emigration would prove useful for the Jews themselves, first, because they would be free from anti-Semitic attacks, and then because in their own settlement they might live unhampered according to their own ways.

H0177-0039

The dreadful development which the Jewish question took under Hitler, and which was justified by him as being a reaction against the policy pursued by the emigrants, was never more regretted by anyone than by Rosenberg himself, who blames himself for not having protested against the attitude of Hitler, Himmler and Goebbels, as much as he protested against Koch's influence in the Ukraine. Rosenberg also does not hesitate to admit that his suggestion to Hitler to shoot Jews instead of Frenchmen after the recurring murders of German soldiers was an injustice born under a momentary feeling--despite his belief-in its formal admissibility--because, from the purely human standpoint, the real basis for such a suggestion was lacking, namely the active participation of those Jews. I am mentioning this event again, as it is the only instance where Rosenberg wanted retribution by the death of Jews. On the other hand, one must insist with the greatest emphasis that there is no proof of Rosenberg's being aware of the extermination of five million Jews. The prosecution is blaming him for making preparations for an anti-Semitic congress as late as 1944, which did not take place only because of the course of the war. What sense could such a congress have had when Rosenberg knew that the majority of the Jews in Europe had been already exterminated?

Rosenberg had no faith in democracy because it meant for Germany a split into numerous parties and a constant change of government, making finally the formation of an efficient government quite impossible. Another reason for his not having faith in democracy was that non-German democratic powers did not stand by their democratic principles in some cases when they could have been of benefit to Germany, for instance in 1919 when Austria was willing to be annexed to Germany and later on at the referendum in Upper Silesia. But Rosenberg did not turn towards tyranny for that reason. To paragraph 25 of the party program he said in his comments on page 46: "The central power--in this case the Fuehrer's power is mean--should have as advisors

H0177 - 0040

representatives of the people as well as trade chambers grown out of organic life" (Document Book III, page 6). And in his speech in Marienburg on 30 April 1934, "The Order of the German State", he said: "the national socialist state, must be a monarchy on a republican foundation. From that standpoint the state will not become a deified purpose in itself, neither will its leader become a Caesar, a God or a substitue for God". (Document Book I, page 131)

In his speech "German Law" of 18 December 1934, Rosenberg stressed: "In our eyes the Fuehrer is never a tyrannical commander". (Document Book I, page 135). Only in such expressions was a protest against the development of tyranny possible.

The development went beyond Rosenberg and degenerated. Rosenberg himself learned it while being Minister for the East. Rosenberg was an idealist, but he was not the unscupulous man who inspired the state and the Fuehrer to commit crimes. I believe, therefore, that he should not be included in Mr. Jackson's accusation (page 8), that Rosenberg belongs to those men in Germany, who have been "the very symbols of race hatred, of the rule of terror and violence, of arrogance and cruel power".

In looking over Rosenberg's writings, one more often finds statements and expressions which give a decided impression of tolerance.

He says, for example, in his "Myth", page 610 of the national church: " German church cannot pronounce compulsory dogmas which every one of its followers is compelled to believe, even at the risk of losing his everlasting salvation". In his speech "Ideology and Dogmatics", on November 5 1938, in the University of Halle-Wittenberg, he demanded tolerance toward all denominations with the demand of "inner respect for every real denomination". In his speech "On German Intellectual Freedom" of July 6 1935, he also spoke up for the freedom of conscience. There was no document presented which contained a proposal by Rosenberg for criminal persecution against one of his numerous ideological opponents, although he may have been prompted to do so by their

H0177-0041

sharp attacks on his opinions.

Further, the Prosecution accused him of militarism and an exaggerated respect for the soldier. Rosenberg was indeed an admirerer of the soldier's life and his heroic attitude toward life, but he also admired the peasant's standards as the basis of the national character. He promoted the creation of a people's army, first as the outward expression of Germany's unity, and at home for the purpose of strengthening and educating the people. However, he denies that in this connection he thought of world conquest. On this point I can refer to his speech, "Germany's Position in the World", of October 30 1933. There he offered peace to Russia on the occasion of the German withdrawal from the League of Nations. (Document Book I, page 147). I shall quote this part for it proves also that National Socialism did not want to interfere in the affairs of other countries: "We are ready at any time, to maintain absolutely correct relations with Soviet Russia, because we, of course, do not necessarily want to change the valves of an ideology in the field of foreign police and foreign relation".

In the same speech he emphasizes that the avowal of an ideology, which he calls ethnology, it "not meant to be a lecture on racial hatred, but a lecture on racial respect". (Book, "Blood and Honor", page 377).

Mr. Jackson called Rosenberg's nationalism "wild" one. Rosenberg was passionate, but he wnated thereby to overcome the class-conflict among the people which threatened their life. For a clearer understanding of the facts it may also be said--

THE PRESIDENT: (Interposing): Dr. Thoma, the Tribunal would like you to finish your speech before lunch, if you could possibly summarize some parts of it. I don't know whether that is possible.

DR. THOMA: I shall try to do that, Mr. President.

I shall once more refer to Mr. Jackson's statement that Rosenberg's "nationalism" was a wild one. In this connection I should like to refer only to the fact that such a nationalsim

H0177-0042

was a compensatory symptom, which is usually found in a conquored country.

As to the accusation dealing with anti-Christianity, that is something which I have already mentioned, and I should ljust like to refer to it.

I have already mentioned the words "Master Race", and in that connection I refer to the documents of Rosenberg. I wish to mention the fact that these words are not found in the documents at all.

Concerning the Party program. I stated that Rosenberg did not draft this, but rather supplied only a commentary. Also, we are not concerned with the things contained in the Party program, but rather, how the Party program was re alized.

I refer to the witness Funk, who stated that in his first action and his ferst program as Minister of Economy, he did not refer to the Party program, but rather, that his program was democratic and liberal.

H0177 - 0043

The Party program was kept neither in a positive nor a negative sense. The government was carried on just as it was in other states on the basis of emergencies and necessities.

If it please the High Tribunal, I shall turn to the accusation that Rosenberg was the delegate of the Fuehrer for the supervision of the entire education and spiritual life under the NSDAP. In reading the affidavit of Dr. Eppert, I refer to the fact that Rosenberg as head of his office had no executive power in that capacity and that Rosenberg interpreted the duties of his office in such a way that he published magazines on cultural and scientific topics, and the contents, after 1933, always favored cultural subjects.

On the basis of the entire literature which is at our disposal, it is not in accordance with the fact that Rosenberg had used his opinion for any secret purpose. After 1933 he was very generous in his efforts to deal with political documents. I have said in addition that this foreign political office concentrated in such a way as to regulate all cultural values as they appeared, and to regulate them nobly.

May it please the High Tribunal, I shall now turn to the topic of morality as the basis of the accusation. I should like to ask the High Tribunal, even though I do not read this topic of moral law, tat it consider this topic as having been read by me. In this connection, I should like to refer to Pages 82-a through 82-g, and I should like to ask the High Tribunal for permission not to read this matter and yet to have this matter considered as having been submitted and read into the record.

THE PRESIDENT: Dr. Thoma, all the speech will be taken as being presented to the Tribunal. By your summarizing it, you are not excluding it from the record of the Tribunal. The Tribunal will take note of it all.

DR. THOMA: Thank you very much, Mr. President.

I shall now sum up in conclusion, and I should like to point out the following. Rosenberg was caught up in the destiny of his nation in a period of heavy foreign political opporession and internal dissension. He struggled for cultural purity, social justice and national dignity and rejected all the movements prompted by passion which did not admit these high values or which consciously attacked them in an irreverent manner. With respect to foreign policy he stood for an agreement, especially between the four central powers of the European continent, under recognition of the heavy consequences of a

H0177 - 0044

lost war.

He acted in all loyalty and respect towards a personality, who gave a political shape and increasing power to his ideas. After the political victory at home, Rosenberg advocated the overcoming of the polemics and other aspects of the period of struggle. He stood for a chivalrous solution of the existing Jewish problem, for a large scale spiritual cultural instruction of the party, and, contrary to the statements of the prosecution, he refused any religious persecution. He cannot be blamed for emphasizing a definite religious-philosophical conviction of his own. The practical utilization of many of his views was accepted by authoritative agencies of the party but they were disregarded in a steadily increasing proportion, especially after the beginning of the war. Finally as has been discovered now, they were often turned into the opposite of what Rosenberg fought for.

Until 17 July 1941 Rosenberg was excluded from participation in any state legislation.

Considered from the point of view of personal responsibility, all his speeches and writings come within the scope of unofficial journalistic activity which every politician and writer must admittedly be at freedom to engage in, a freedom which the Tribunal has fundamentally acknowledged with regard to all utterances by the statesmen of all other countries during the unofficial period of their career. It seems to have all the more importance that Rosenberg as a private citizen did not make any appeals in favor of a war or any inhumane or violent act.

As Minister for the East he advocated a generous solution taking into consideration the comprehensible national and cultural aspirations of the Eastern European peoples. He fought for this conception as long as it had some prospects. Ultimately realising that Hitler refused to be persuaded, he requested his dismissal. The fact that he could not prevent many outrages from happening in the East cannot be brought a penal charge against him. Neither the Wehrmacht nor the Police nor the Labor conscription were subject to his authority. Whenever injustices or excesses came to his knowledge, he did everything he could to counteract them.

For almost a whole year, Rosenberg endeavored to keep the labor recruiting on a voluntary basis. When several age classes were later called,

H0177 - 0045

he protested against every abuse by the executives and always demanded redressing measures. Quite apart from the legitimate requirements of the occupation power, his labor legislation for the Eastern territories was necessary for the establishment of order and the repression of despotism as well as of dangerous idleness, growing sabotage and increasing murderous actions. It was wartime and it was a war area, not a post-armistice period or by any means a period subsequent to a definite capitulation.

So far as he was informed of things and commanded any influence Rosenberg fought for his good conviction. The fact that adverse powers were stronger cannot be brought as a charge against him. One cannot punish offenses and at the same time punish those who revolted against them. With regard to the terrible extermination orders which have now been disclosed, it is certainly possible to raise the point whether Rosenberg could not have exerted a much stronger opposition. Such a demand would, however, suppose an earlier knowledge of things which he only learned after the collapse. Should he be incriminated with any carelessness it must not be forgotten that he felt the duty of serving the German Reich and engaged in the struggle for its existence and that terrible injuries were also inflicted upon the German nation, injuries which Rosenberg was unable to accept as war necessities.

The official orders, as for example the duties of the Operational Staff West and East, were carried out by Rosenberg in preserving his personal integrity. The seizure of artistic and cultural goods he always carried out provisionally, subject to final decision of supreme headquarters and, as far as it was possible in any way, subject to agreement with the proprietor. Moreover, for the use of stray furniture for the benefit of air raid victims in Germany, provisions were made for the subsequent indemnification of the proprietors based upon a precise inventory.

Considered in his entire personality, Rosenberg has followed his belief and love for an ideal of social justice allied to national dignity. He has fought for it openly and honorably, he has gone to prison and risked his life for it. He did not only step in when National Socialism afforded the opportunity to begin a career but at a time when it was dangerous and only cost the life of victims. In his speeches after 1933, he took his stand in favor of a deeper spiritual formation, a new cultural education, personality

H0177 - 0046

values and respect for every form of honest work. He accepted the sombre days of that time as unfortunate but inevitable, accompanying phenomena of a revolution without bloodshed without having in fact been aware of the secret details.

He fully believed that the better forces and ideas would prevail over these as well as other human imperfections. In the war, he was conscientiously at the service of the Reich.

For 25 years, he kept his personal integrity and untainted character through the revolution and the events of the war. He had to experience with deep sorrow how a great idea in the hands of those possessed with the lust for power was gradually abused, and in 1944, at a party reunion, he protested again this abuse of power entrusted to its holders. He had to see at the court proceeding, to his disgust and horr, the evidence of the degeneration of his life ideal, but he knows that his aspirations and the aspirations of many millions of other Germans have been honorable and decent. Today indeed he stands up for his honorable, honest and humanly irreproachable conduct and, full of sorrow for the wounds inflicted upon all nations and for the downfall of the Reich, he awaits the sentence of a just Tribunal.

(The Tribunal adjourned until 11 July 1946, at 1000 hours).